United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

76-1495

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FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

FRANK ALTESE, et al.,

Appellant.

BRIEF FOR APPELLANT
SAVERIO CARRARA

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Preliminary Statement

Defendant, SAVERIO CARRARA, appeals from a judgment of conviction entered on October 15, 1976, finding him guilty of violation of 18 USC 1955 (a substantive anti-gambling statute). Judge Jacob Mishler sentenced Mr. Carrara to a term of four months imprisonment, a fine of $5,000, and thirty-two months probation. He was continued in bail pending the decision on this appeal.

Table of Abbreviations

The contractions in this brief are employed with the following meaning:

"A"--Defendants' joint Appendix;
"R"--Record on Appeal;
"T"--Trial minutes;
"H"--Hearing minutes (Suppression);
"EX"-Exhibits.

STATEMENT OF FACTS

For Mr. Carrara, I adopt the factual account of the facts in the briefs of the co-appellants, and will detail only those additional particulars that apply to his separate points.

Particularization of the facts to the points to be raised:

1. Rejection of Evidence

After the close of the prosecutor's case, an offer was made for Mr. Carrara to have records of the New York City Department of Buildings marked in evidence. Judge Mishler called to the prosecutor if he had an objection, and following the objection, the admission was denied (T-5799). In place of what will be claimed as an erroneous denial of clearly admissable documentary evidence, there was only a truncated stipulation given to the jury covering a shortened period of contended involvement by Mr. Carrara (T-5806). The building records were offered in support of Mr. Carrara's defense that his presence in the Hi-Way Lounge was to aid in the performance

of construction in progress during relevant periods of supposedly incriminating conduct. Prosecution testimony and exhibits in evidence regularly established the progress of construction at the Hi-Way Lounge, and Mr. Carrara's participation therein. Following are the places in the record evincing such activity:

a. T-898-902: One Anthony Mercogliano observed in the premises and photographed in an upstairs window (Ex. 72F). The proffered New York City Building Department records would have established that Mercogliano was the general contractor for the construction project at the Hi-Way Lounge.

b. T-899: (Govt. witness Agent Lahey) Building materials seen being delivered and Mr. Carrara going into the cellar and upstairs over the Hi-Way Lounge.

c. T-958: (Witness Agent Lahey) Construction in progress.

d. T-1911: (Witness Agent Leisgang) Saw construction going on.

e. T-2035: (Witness Agent Leisgang) Observed construction in progress.

f. T-2279, Ex. 308K: (Witness Agent Hendrickson) Anthony Mercogliano in photograph.

g. T-2280-2285, Ex.308K: (Witness Agent Hendrickson) Anthony Mercogliano in photograph.

h. T-3831-3835: (Witness Agent Queener) Construction in progress on 2nd floor of Hi-Way Lounge. Charley Alongi identified by Witness Queener. (Charley Alongi was doing plumbing work at the site.)

i.	T-4707, 4708:	Mr. Carrara offers Building Department records for identification. They are marked Ex. U for identification.
j.	T-4708-4710:	(Witness Agent Parsons) Saw construction in progress on May 15, 1973.
k.	T-4721:	(Witness Agent Parsons) Saw Saverio Carrara leave the cellar and go upstairs.
l.	T-5349:	Presiding judge alluded to construction in a disdainful manner.
m.	T-5350:	Judge expressed doubt that building records were material.
n.	T-5453-5455:	Carrara's outline of direct case offering explanation of photographs and Charley Alongi.
o.	T-5794-5799:	Carrara requested guidance regarding extent of prosecution's range of cross examination of Mercogliano. Carrara's request of building department records to be deemed marked in evidence denied.
p.	T-6938-6943:	During jury's deliberation they requested to have the building department records entered by Mr. Carrara.
q.	T-6946:	Pleas of Mr. Carrara to court for submission of building department records to the jury, and review of denial of permitting Mercogliano as witness without cross examination dehors direct examination.
r.	T-6954:	Stipulation limiting construction evidence through May 7th read to jury. The jury's request had keyed to May 16th.
s.	T-6957, 6958:	Judge labelled construction records not relevant and answered jury's request by stating there were no records in evidence, and reminded them as to the stipulation they heard instead.

2. Refusal to Limit Cross Examination of Defense Witness Who Was Offered for Limited Purpose

After the prosecution had rested, Mr. Carrara sought the guidance of the court as to the range of cross examination were the contractor, Mr. Mercogliano, called to testify (T-6946). Specifically, Mr. Carrara asked if the prosecutor would be permitted to inquire of Mr. Mercogliano of his familiarity with the other defendants, and the judge replied that of course he would permit such questions (T-6946). Mr. Carrara then declined to call the witness and asked in his place for the stipulation that there was construction in progress during April and May, 1973 (T-6947). The prosecutor repeated the limitation of the stipulation to May 7th, and Mr. Carrara once more cited that such limitation emasculated the effect (T-6947-6953), and there was continued exchange by the judge and Mr. Carrara's counsel relating again to the range of cross examination and the refusal to receive the building department records into evidence. Carrara then rested (T-6954).

3. Prejudicial Comments of Prosecutor in Rebuttal Summation

In the government's opening he assigned the role of financier of the operation to Mr. Carrara (T-147). At the end of the case the prosecution opened and concentrated his attention to Mr. Carrara as a comptroller (T-6120-6132). A specific suggestion was told the jury "Couldn't Mr. Carrara be OM the comptroller...." (T-6061-6163).

Mr. Carrara argued that the opinion of the government's expert dispelled any factual foundation in evidence upon which to found an inference that Mr. Carrara was a comptroller (T-6592-6596). He called attention to contended declarations referable to finances, that in each instance Mr. Carrara was asking for money and not offering it (T-6596). Accent was made upon the absence of all necessary indicia to characterize a comptroller, viz: fingerprints upon seized gambling material; automobile use; street observation; telephone records; presence at seizure locations, and observations with servicing runners (T-6600-6604). A direct suggestion was made to the jury that there was a void of evidence to make Mr. Carrara OM the comptroller (T-6592-6596). Even Judge Mishler joined in the doubt that there was proof in the record relating to Mr. Carrara as being "OM" the comptroller (T-6702-6705).

In his rebuttal the government told the jury that Mr. Carrara, with Sabato Vigorito, were bag men paying off the cops, and he buttressed his assertions by quoting from the interceptions of May 15th and May 16th (T-6697, 6698).

Mr. Carrara made a specific objection to the government's assignment of the "payoff" role to him in his rebuttal (T-6942, 6943). The government had conceded that its expert would not tie in Mr. Carrara as a comptroller (T-5000).

4. Prejudicial Limitation of Mr. Carrara's Reference to Specifications in the Government's Bill of Particulars in His Summation

In response to defendant, Mr. James Napoli, Sr.'s demand for a bill of particulars, the government contended that the illegal gambling business grossed revenues of $2,000 or more on May 7, 1973 and May 12, 1973 (Govt.'s Bill, Para. 2, p.142). Mr. Carrara sought to argue in his summation that on those particular days there was an absence of evidence of such volume. He was debarred (T-6616).

5. Replacement of a Juror Upon Objection of Counsel

On August 4th, after four weeks of trial one of the seated jurors (Martinez) did not appear at 10:14 a.m. when the jury was seated, but was outside at 10:15 a.m. (T-4571-2). Judge Mishler sought consent to substitute an alternate. All counsel asked the court to await his arrival and were refused. The judge seated alternate No. 1, against request of counsel to await his arrival. An objection was noted and the testimony resumed. By the court's own statement after two to three minutes the absent juror appeared at the juror's entrance. Request was made that Mr. Martinez be reseated but the court discharged him and continued the trial with the substituted alternate (T-4567-72). Previously, the court had indulged greater tardiness of a juror (T-3932-5).

6. Permitted Method of Testimony Regarding Interceptions at the Hi-Way Lounge

There was a protracted argument relating to the manner of playing the tapes to the jury. The initial way was to play the original tapes through. Then they were repeated and stopped periodically when the agent would read from a transcript with identities of the speaker. All the while the jury would be referring to transcripts containing the contended conversations of the government without the identity of the speakers. There were numerous objections of counsel as well as requests to remove the transcripts both from the witnesses and the jury. At one time with the witness, Agent Leisgang, it was attempted to have him testify without the transcript in hand and he demonstrated repeated failures to relate the conversations overheard. Then following further discussion, the original method was resumed and continued through the balance of the playing of the tapes (T-2635; 2641-46; 2665-66; 2800; 2817-35; 2829; 2831-39; 3320-3821; 3342-47; 3455-59; 3495-98; 3500-28; 3542-74; and 3616).

7. Failure of the Government to Name and Identify Mr. Carrara in the Affidavits and Orders Authorizing the Interceptions as a Subject Whose Conversations Were Expected to Be Intercepted During the Bugging of the Hi-Way Lounge

Government Agent Charles Parsons, admittedly an active participant during the whole course of the investigation which culminated in the indictment, knew Mr. Carrara personally in 1972, and of him in 1970, 1971 (T-4736-37). Agent Parsons

nced a detailed knowledge of the subject investigation ...ved through his service as case agent and information received from fellow agents, informants and personal observations. Agent Leisgang submitted a log for April 18, 1973, reporting Mr. Carrara entering and exiting the Hi-Way Lounge (Visual Log of Agent Leisgang for Wednesday, April 18, 1973 attached as a Brief Exhibit, infra.). Agent Queener noted that Mr. Carrara entered and exited the Hi-Way Lounge on April 28, 1973 with one Mikey DeLuca, who was both a defendant in the case as well as a person named in all of the supporting papers and orders formulating the authorization of the permitted interceptions at the Hi-Way Lounge. On the same day of April 28, 1973, Agent Parsons himself monitored a conversation of "You don't have to pay Sam." These observations transpired during the course and term of the Hi-Way I Order of Hon. John R. Bartels, dated April 12, 1973, and which terminated on April 30, 1973 (Visual Log of Agent Queener, and Monitoring Log of Agent Parsons, both dated April 28, 1973 and attached as Brief Exhibits).

The prosecuting attorney, Fred F. Barlow, Special Attorney for the United States Department of Justice, submitted a document which he entitled "Government's Affidavits and Analysis," dated June 16, 1976 (attached as Brief Exhibit, infra). In this instrument he referred to the submission of

copies of his and Special Agent Charles J. Parsons' affidavits previously entered in U.S. v. Saccone, 76 CR 62. One of Agent Parsons' affidavits contained a schedule of visual and photo logs running from April 13th through May 21, 1973. On neither April 18th nor April 28, 1973, in the schedule did Agent Parsons note the entry or interceptions regarding Mr. Carrara. Knowing of Mr. Carrara as he stated, and having those personal interceptions on April 28, 1973, in the Hi-Way Lounge, and the April 18th observations of Mr. Carrara, with co-defendant Mikey DeLuca, Mr. Parsons nevertheless testified at a suppression hearing that he had no probable cause against Mr. Carrara (H-214).

Against this position that Mr. Carrara was unknown to the prosecution is the contents of the probation report given to the court before sentencing (Letter Request for a Copy to Append to the Appendix was ignored, but will be supplied to this court). The probation officer detailed intimate factors about Mr. Carrara's activities in the gambling area and identified the prosecutor, Fred F. Barlow, as the source of the information. Mr. Barlow, admittedly handled this prosecution from almost its inception (assisted Parsons in preparing Affidavit of May 24, 1973; T-4300-01). He drafted and submitted numerous affidavits to the several judges of this court to obtain the authorization for interceptions at the Hi-Way Lounge. Yet, Mr. Barlow did not identify Mr. Carrara as a person who was likely to be intercepted (T-4300-01). Copies

of the documents referred to in this paragraph will be added to this brief as exhibits.

8. Proof of the Essential Elements of Section 1955

With the dismissal of the conspiracy count the only remaining charge against Mr. Carrara was violation of Section 1955 (Count #4 of the superseding indictment) transpiring at the Hi-Way Lounge. The nature and extent of the government's evidence directed against Mr. Carrara consisted of nine photographs in evidence and his conversations intercepted on five days at the Hi-Way Lounge. They are identified as follows:

Photographs	Tapes
Ex. 129	April 28
Ex. 132	May 4
Ex. 167B	May 5
Ex. 168A	May 15
Ex. 168B	May 16
Ex. 257B	
Ex. 257Q	
Ex. 312	
Ex. 318	

The government stipulated to the absence of telephone numbers identified with Mr. Carrara (T-5555-57), and will not dispute that he was never seen or intercepted at any other locations comprising the balance of the counts (T-897). In

the interceptions played of Mr. Carrara, he never talked with any other persons connected with this case except the co-defendants, James V. Napoli, Sr. and James V. Napoli, Jr. There were no seizures from Mr. Carrara's person, in his presence or at places with which he was identified, nor were there any of his fingerprints taken from any of the materials seized and received in evidence, and no automobile was used by him or registered in his name.

Out of the twenty-two defendants named in Count #4 with the situs at the Hi-Way Lounge, six (DiMatteo, Mascitti, Ricciardi, Scafidi, Simonelli and Vuolo) were the subject of massive testimony, materials and exhibits of gambling activity at Apartment 309 in Astoria; four more (Lotierzo, Altese, Annarumo and D'Avanzo) were related to evidence of observations, photographs, searches with materials seized and intercepted conversations at other locations outside the Hi-Way Lounge, and one other (Pinto), to the activities in Yonkers, New York. All testimony and evidence concerning the activities at Yonkers were stricken by the court (T-5736).

Relevant also to this point is the refusal of the court to permit Mr. Carrara to refer in summation to the Government's specifications in its bill of particulars as to the $2,000 daily volume on May 7th and May 12th. As to the alternative element of Section 1955 requiring continuous

operation in excess of 30 days (Subdiv. b.(1)iii) emphasis was made to the interceptions played spanning only from May 4th through May 16th involving Mr. Carrara.

Following dismissal of the conspiracy count (T-5714), the government stated to the court that the remaining substantive counts are in the Hi-Way Lounge, plus Apartment 309, and in Howard Beach (T-5733), and thus the volume of testimony and evidence keyed to the other locations was, inferentially, excluded and to be disregarded.

9. Refusal of Court to Grant a Severance Following Dismissal of the Conspiracy Count

Testimony in the case began on July 7th, 1976 (T-125) with the government's opening. It continued for four weeks through August 11, 1976 when the government rested (T-5559-60). The conspiracy count was dismissed on August 12th (T-5714). From August 5th, when Philip Harker, the government's gambling expert was qualified by the court (T-4964), running through August 10th, when his testimony was concluded (T-5316), he gave voluminous testimony relating to the activities devoted to establishing the existence of one overall conspiracy.

Fixing attention upon the testimony of the witness Mr. Harker, reveals that very close to the whole foundation for his opinion rested upon materials never associated with the Hi-Way Lounge, and never directly to Mr. Carrara. Those foundations as an example are:

Evidence	Source	Time	Identity with Hi-Way Lounge
Suitcase contents seized at Howard Beach (T-5075-76)	Ex.320	June 1971	None
Apartment contents seized at E.2nd Street, Brooklyn	Exs.62-68, a-e	May 1972	None

The balance of Mr. Harker's analysis never by direction related to persons Mr. Carrara talked to or was seen with. In sum, the whole of Mr. Harker's testimony was material and relevant to the overall conspiracy count and should have been expurged when that count left the case. It created an ineradicable spill-over incapable of separation to allow a fair consideration of the remaining substantive counts.

THE QUESTIONS PRESENTED

The following questions are advanced for consideration on this appeal:

1. Was Mr. Carrara denied due process and the right of defense when self-authenticating public records were denied admission?

2. Because the court accorded full range of cross-examination of a "limited purpose" witness, was the appellant denied due process?

3. Was there harmful and prejudicial misconduct when the prosecutor:

   a. referred to appellant as a "pay off man" in rebuttal without an adequate evidentiary basis?

   b. shifted the assignment of roles to appellant in rebuttal, in a prejudicial manner, clearly calculated to mislead the jury?

4. Did appellant, with only the substantive count to confront, have the right to treat an essential element of Section 1955 in his summation by keying to the government's specifications in its bill of particulars ($2,000 daily volume).

5. Was there an abuse of discretion by the court in substituting a juror against objection of counsel, and without a basis disclosed for the action?

6. In the procedure allowed by the court in playing the tapes:

   a. Was the jury prejudicially channelled to the content and identities of the speakers by the method employed?

7. Should the interceptions be suppressed for the failure to name Mr. Carrara as a person known to the prosecution?

8. Was the proof sufficient to show the guilt of Mr. Carrara beyond a reasonable doubt?

9. Was there a prejudicial spill-over and transference of guilt because of the volume of evidence received against the dismissed conspiracy count?

POINT I

THE COURT ERRONEOUSLY EXCLUDED CLEARLY ADMISSABLE DOCUMENTARY EVIDENCE WHEN IT DENIED ADMISSION OF THE NEW YORK CITY DEPARTMENT OF BUILDING RECORDS.

The records of the New York City Department of Buildings were clearly admissable under the pertinent rules, being Rule 803(8), public records; Rule 803(6), records of regularly conducted activity; and Rule 902(2), records that are self-authenticating (all Federal Rules of Evidence, effective July 1, 1975).

The appellant, Carrara, had alluded from the beginning to construction activity in progress at the Hi-Way Lounge (T-898, testimony on July 12th). As is seen by the frequent instances in which Mr. Carrara's counsel sought to establish the construction activity throughout the trial, it did become an issue which he deemed critical to his defense. At the very least the records were pertinent if only to explain to the jury the role that Mr. Mercogliano was playing at the Lounge. The government had introduced Mr. Mercogliano to the case by entering an exhibit (EX-72f) showing him at an upstairs window over the Lounge. Would not the building records be then relevant at least to identify Mr. Mercogliano as the general contractor on the job and thus to dispel a sinister inference of being possibly a lookout?

The prejudice to Mr. Carrara is clear and unmistakeable when the jury, while deliberating, asked for those records and they were told that there were none (T-6938-43).

Considering that even the court had doubt of Mr. Carrara's involvement in the case in at least three instances (T-5631, 5680, 6702, 6705), would not the documentary corroboration of the defense he raised be then clearly relevant?

POINT II

THE COURT'S REFUSAL TO LIMIT THE GOVERNMENT'S CROSS-EXAMINATION OF MERCOGLIANO TO HIS CONSTRUCTION TESTIMONY DENIED MR. CARRARA A VALID DEFENSE AND DENIED HIM DUE PROCESS.

The so-called "American" rule as distinguished from the "English" rule confines cross examination to matters which had been brought out on direct examination. U.S. v. Russell, 100 U.S. 621. The court was expressly informed that Mercogliano was to testify to the construction issue only (T-6946). Guidance was asked whether the government could inquire as to factors concerning other defendants, and the court replied affirmatively (T-6946).

The effect of the judges holding prevented Mr. Carrara from bringing his defense to the jury, and was thus clearly prejudicial to him, and was reversible error. U.S. v. Russell, supra, citing U.S. v. Tucker, 5 F2d 818. See also Union Elect v. Synder Estate Co., 65 F2d 297. Admittedly the conventional rule of limitation of cross examination would not apply if bias of the witness or prior inconsistent statements were at issue as was discussed in U.S. v. Stoehr, 100 F. Supp. 143, affd. 196 F2d 276, Pa. 1951). But that was not the case in this appeal.

The limitation rule is firmly established and widely applied (98 CJS 393(b), Witnesses). For the trial court to disregard it was harmful to the appellant and denied him a fair trial.

POINT III

A. THERE WAS AN INSUFFICIENT EVIDENTIARY BASIS TO PERMIT THE PROSECUTOR TO REFER TO APPELLANT CARRARA AS "PAYOFF MAN"

B. THE GOVERNMENT REFERENCE TO APPELLANT CARRARA AS "PAYOFF MAN" IN REBUTTAL WAS OUTSIDE THE PERMITTED SCOPE OF REBUTTAL.

The government's assignment of roles to Mr. Carrara was mercurial. It began with "Financier" in his opening (T-147); went to at least a "Runner" and probably a "Controller" (T-5706); and then in his first summation said, "Couldn't Mr. Carrara be OM the controller.....?" (T-6061-6163). Mr. Carrara's summation was in part devoted to dispelling all indicia consistent with the actions of a controller and financier (T-6592-96, 6602-04, 6617). Then the prosecutor in his rebuttal at very near its end gave Mr. Carrara the mantle of "Pay Off Man" supporting his contention with quotations from the interceptions of May 15th and May 16th (T-6697, 6698).

In seeking to establish the conversations of May 15th and May 16th as the eventiary foundation for payoff man, I submit, is a reliance upon equivocal and ambiguous conclusions. The interceptions played on May 15th showed Mr. Carrara in the following conversation:

May 15

JN: What did that kid tell you, the Division's out?

SC: I didn't hear nothing yet...(inaudible) ...

JN: Sally!!

Rosie: Sally!!

SC: (Inaudible)...the Division's out.

JN: You can hear it from the horse's mouth. Can you spare a moment, Sally?

SV: Yeah, sure.

SC: I told this guy, you wanta kid me?

JN: No, get the true facts. What we were talking about yesterday that that guy told you. That copper.

SV: No more Division. No more Division.

JN: As of when?

SV: As of the fifteenth. All finished. Only thing got left now is Boro.

The May 16th interceptions do not appear any more definitive for a proper foundation to permit the use of such an inflammatory label as "payoff man." While this circuit affirmed convictions in U.S. v. Wilner (CA 2, 1975) 523 F2d 68 (affirming the general rule that the prosecutor, in his closing statement, can marshall all inferences which the evidence supports) and in U.S. v. White (CA 2, 1973) 486 F2d 204, where the court admonished the prosecutor for "name calling," and in U.S. v. McCarthy (CA 2, 1973) 473 F2d 300, it was because the evidence in each case supported the prosecutor's remarks, and no prejudice befell the defendants. However, when in U.S. v. Fiorella (CA2, 1972) 468 F2d 688,

the prosecutor referred to the defendants as "managers" and the "board of directors" of a gambling operation, the conviction was affirmed because (and stressed) that the trial court instructed the jury to discount the statement. In this appeal there was not only a failure of the court to instruct the jury to disregard the reference, but a specific request for a similar instruction was refused by the court. An excerpt from the minutes is set forth here:

Pages 6942, 6943:

> "MR. PIAZZA: 'Just for the record and to protect the interest of Mr. Carrara, this role of pay-off man, and that's the whole subject of the conversation of May 16, was the rebuttal in summation. He never adopted that identity throughout the trial, your Honor. And I suggest your Honor charge the jury that it's irrelevant to the issues in this case and I make that for the record, your Honor. It was only brought up as a non-evidentiary statement.'"

There is a parallel in U.S. v. Goodwin, 492 F2d 1141 (5th Cir. 1974). The prosecution had described the defendant as a "Fugitive." The court found this inflammatory and excessive where such characterization was unsupported by any evidence in the record. It was the type of "shorthand" characterization of an accused not based on the evidence. It was especially likely to stick in the minds of the jury and influence its deliberations. Hall v. U.S., 419 F2d 582 (5th Cir. 1969).

The term "pay-off man" was a specific characterization likely to be interpreted as a legal conclusion based on particular facts. McMillan v. U.S., 363 F2d 165 (5th Cir. 1966) and Hall, supra.

It cannot be concluded that there was such support in the May 16th interceptions that "pay-off man" was a fact shown by the evidence. There was only discussions relating to police re-organization, and no reference at all to payments to police. Thus, the adaption of the label "pay-off man" became a succinct, pithy, colorful and provocative break with the required decorum and fairness required of the government. It was such a specific characterization as was likely to be interpreted as a legal conclusion based on particular facts. It was the last thing the jury heard about Carrara before the Court's general charge. At the very least upon counsel's objection or request, the court should have instructed the jury forcefully and unequivocally that no evidence had been introduced to establish that Carrara was a pay-off man, and that the prosecutor's comment should be disregarded. U.S. v. Goodwin, supra, at page 1148.

The pay-off reference was the development of new arguments on rebuttal in contravention of the accepted purpose to answer arguments put forth by defense counsel in his final statement. Although in Moore v. U.S., 344 F2d 558 (USDC 1965), the court found no prejudice it did state

the general rule to be that the government should not be allowed to develop new arguments on rebuttal, but should be restricted to answering the defense. In this Carrara case the trend of his defense was directed towards dispelling the role of financier. Then, after the government switched to assigning Carrara the label of controller, the defense argued to neutralize such finding or foundation in the evidence. Now in rebuttal transfer to the identity of pay-off man. Because of its inflammatory nature and the absence of an opportunity for a reply it became prejudicial to the defendant's right to a fair trial. It is not as found in U.S. v. Lawson, 482 F2d 535 (8th Cir. 1973), that the prosecutor was speaking merely with vigor in response to defense counsel's argument preceding the prosecutor's rebuttal. Nothing was said in Carrara's final argument about pay-off man because the remarks were directed to the controller characterization assumed by the government in its first closing statement. Thus, the ascription of the role of pay-off man in the government's rebuttal was the development of new arguments not raised, and therefore prejudiced the defendant.

POINT IV

THE TRIAL COURT IMPROPERLY PREVENTED PROPER ARGUMENT DIRECTED TO SPECIFICATIONS IN THE GOVERNMENT'S BILL OF PARTICULARS.

This point does not encompass an attempt to limit the government in its proof to the specifications in its bill of particulars. The intendment of the argument is to persuade that it was error to prevent counsel from keying to the only two days contended by the government that the operation grossed revenues of $2,000 (May 7th & 12th, 1973). With the conspiracy count dismissed, the period covering Count #4 was narrowed to the activities at the Hi-Way Lounge from April 13, 1973 through June 15, 1973 (Count #4 of the Superseding Indictment, and Par. 25(85) of the Government's Bill of Particulars.

Counsel for appellant Carrara was merely endeavoring to marshall the evidence seeking to persuade the jury that on those two dates there was either an absence or insufficiency of evidence for a finding of gross revenues of $2,000.

I set no citations on this point except to refer the court to the case of Herring v. New York (1975) U.S. , 95 S.Ct. 2525, 45 L.Ed. 2d 562, where the right to make a closing argument was given constitutional stature. When the trial justice denied counsel's endeavor to marshall

the evidence on the days of May 7th and May 12th, he effectively circumscribed the right to a full closing argument on an issue essential to a finding of guilt in violation of Section 1955.

POINT V

THERE WAS AN ABUSE OF DISCRETION BY THE TRIAL JUSTICE IN SUBSTITUTING A JURY AGAINST OBJECTION OF COUNSEL.

It is specifically provided in Rule 24(c) of the Rules of Criminal Procedure that a juror may be substituted only when they become or are found to be unable or disqualified to perform their duties (Fed. Rules of Criminal Procedure, Section 24(c) 18 USCA).

In two recent cases this issue came before this Circuit. In U.S. v. Domenech, 476 F2d 1229 (2nd CA 2d 1973); cert. den. 424 US 840, the trial judge substituted a juror with an alternate after the regular juror was ten minutes late. The appeals court found a proper exercise of discretion but did comment:

At page 1232:

> "Given the current conditions of transportation in the City of New York, some other presiding officer might have waited a bit longer, but we certainly cannot say that the judge abused his discretion by insisting on going ahead after ten minutes." (In note 4, the court did refer to the desire of the court to give the juror the case that day to avoid a night sitting).

In the present case on appeal the trial judge by his own admission waited only two to three minutes, and gave no reason for not waiting longer (T-4571-2). The late juror did appear and was outside at 10:15 a.m. whereas in the record it was noted his failure to appear was at 10:14 a.m. (T-4571-2). Counsel jointly requested that the juror be reseated but the request was refused (T-4567-72).

In the second case before this circuit, U.S. v. Floyd, 496 F2d 982, 1974, the trial judge substituted a juror after it had received a communication evincing a prejudice against the nature of the evidence in the case (wire-tapping). After reciting Rule 24(c), Fed. Rules of Criminal Procedure, the court held that there was a proper exercise of discretion for the substitution of the juror because of his disqualification.

In both of those holdings the courts found or alluded to grounds for the exercise of discretion. The trial justice in this appeal gave no basis for his action. It is significant that earlier in the trial one other juror was waited upon and seated after a longer period.

In a 10th Circuit case, U.S. v. Baccari, 489 F2d 1973, cert. den. 417 US 914, the court specifically stated that the substitution of an alternate juror without consent of defendants would be improper and grounds for a new trial. The defendants had consented.

The argument made in this point is that without a finding of inability or disqualification as set forth in the rule, a substitution of a regular juror without consent of the defendants is prejudicial and grounds for a new trial. The trial judge in this appeal gave no reason for the substitution other than his unwillingness to wait. Certainly a reasonable time was not allowed in this case.

POINT VI

THE MANNER OF PLAYING THE TAPES BEFORE THE JURY WAS PREJUDICIAL BY DEPRIVING THEM OF EXERCISING THEIR INDEPENDENT JUDGMENT AS TO CONTENT AND IDENTITIES.

While playing the tapes the jurors and the testifying witness were permitted to have prepared transcripts in hand. The effect was that the jury received the transcripts from which the witness was testifying as the testimony, and not the best evidence of the tapes. U.S. v. McMillan, 508 F2d 101, 8th Cir. 1971. What really was transpiring was that the jurors were being told who the speaker was and what he was saying, and were not using their own opinion. In U.S. v. Turner, 582 F2d 143, 9th Cir. 1975, a procedure was employed which was more fundamentally fair. The jurors first read the transcript, and kept it face down while the tapes were played through, after which the transcripts were collected. In this manner they used their own opinion rather than what the witness was telling them. 23 CJS 2d, Crim. Law, Sec. 1035; U.S. v. Bryant, 480 F2d 785.

With the volume of tapes that were played in this case, can it be said that the jury did exercise its independent judgment as of the content of the conversations and the identities of each speaker? Or was an unwarranted concession made to expediency? See Kotteakos v. U.S., 328 U.S. 750 at page 773:

> "True, this may be inconvenient for prosecution. Butour Government is not one of mere convenience or efficiency. It too has a stake, with every citizen, in his being afforded our historic individual protections, including those surrounding criminal trials. About them we dare not become careless or complacent when that fashion has become rampant over the earth."

POINT VII

THE GOVERNMENT FAILED TO NAME CARRARA IN THE APPLICATIONS FOR THE INTERCEPTIONS IN THE HI-WAY LOUNGE ALTHOUGH IT HAD SUFFICIENT PROBABLE CAUSE OF HIS INVOLVEMENT.

Through the references in the record and appendices in this case, it is clear that the appellant Carrara was known to the government sufficiently to have required him to be named in the affidavits and orders authorizing the interceptions at the Hi-Way Lounge. Parsons, the agent in charge, knew of him since 1970, and personally in 1972. He also monitored a conversation on April 28, 1973, in the Hi-Way Lounge when he heard the words, "You don't have to pay Sam" (April 28th monitoring log as an EX for this brief). Mr. Carrara was reported to have entered and exited the Lounge on April 28th, 1973 with Mikey DeLuca a co-defendant

in the case, and who was named in all of the papers regarding the authorization of the interceptions.

Furthermore, Mr. Fred F. Barlow, the government prosecutor, was the source of a great deal of factors concerning Carrara which he served to the probation officer in preparation for his sentence. He dated his knowledge from 1969. (The report will be added to the appendix). Thus, what is clear from an examination of the exhibits referred to is that Mr. Carrara was known sufficiently for the necessity of his inclusion in the affidavits leading to the orders authorizing interceptions at the Hi-Way Lounge. The failure to name him is a fatal omission in violation of Title 18 USC 2818(1)(b)(iv) and mandates suppression of the interceptions. U.S. v. Kahn, 415 US 143 (1974).

It is clear that the Government had probable cause to believe that Carrara was engaged in the criminal activity under investigation at the Hi-Way Lounge, and expected to intercept his conversation there, and thus he should have been named in the application.

POINT VIII

THE PROOF WAS INSUFFICIENT TO ESTABLISH THE GUILT OF THE APPELLANT CARRARA OF VIOLATING SECTION 1955, IN ALL OF THE ESSENTIAL ELEMENTS.

When the quantity of proof existing against Carrara is compared to the volume of evidence received at the trial, it is clear that it is minimal. There were nine photographs

showing him near the entrance to the Hi-Way Lounge. Only in one (EX 318), was he shown to be with any of the other defendants in the case. His intercepted conversations were played only on four days in May (4th, 5th, 15th & 16th). It is significant that on the two days specified by the Government in its bill of particulars when it contended there was proof of gross volume of $2,000, Mr. Carrara was neither intercepted or had been photographed at the location. At least there were no such exhibits or interceptions played or introduced at the trial.

After the court dismissed the conspiracy count, it did declare that it would consider the case as a joint criminal venture and related the nature of the proof to what would be required to prove a conspiracy (T-5728-29). He was going to treat the balance of the counts as three separate conspiracies (T-5738-41). Following the court's separation of the counts into three distinct joint operations, Mr. Carrara need address only evidence related to the Hi-Way Lounge location.

The government had the burden of proving that Mr. Carrara's participation was with knowledge that the persons he was talking to had entered into a plan to engage in an illegal gambling business. U.S. v. Fantuzzi, 463 F2d 683, 389, 2d Cir. 1972; U.S. v. Bushman, 527 F2d 1082, 7th Cir. 1976 at page 1085; cit. U.S. v. Lutwak, 344 US 604; U.S. v. Bridges, 493 F2d 918, 5th Cir. 1974. The record in this case does not permit Mr. Carrara

to be cast in a role as a necessary or integral part of a gambling operation. U.S. v. Box, 530 F2d 1258, 5th Cir. 1976. When the court denied the admission of the building department records, and testimony of the barred witness without broad but improper cross examination, all that was left for the jury was a hypothesis of guilt based on suspicion and conjectute. The totality of the evidence against Carrara could only conjecturally support a finding that he associated himself with the criminal venture, that he participated in it as in something he wished to bring about, and that he sought by his actions to make it succeed. The circumstances may arouse suspicion, but even grave suspicion is not enough. Bailey v. U.S., 416 F2d 110, 116, CADC (1969). In U.S. v. Bethea, 442 F2d 790, 792, CADC 1971, the court stated:

> "The trial judge should not allow the case to go to the jury if the evidence is such as to permit the jury to merely conjecture or to speculate as to the defendant's guilt."

What befell Mr. Carrara in this case was incrimination by association. U.S. v. Pratt, 429 F2d 690 CA3d 1970. Conclusively, Mr. Carrara was not a controller (this by the conclusion of the expert witness, Mr. Harker, T-6592-6596). After the government abandoned the role of controller in its rebuttal by the pay-off reference to Mr. Carrara, there is puzzlement as to what purpose he did serve in the operation.

Even if the proof showed, if such is found to be present in this record, that Carrara engaged in conversations

showing an awareness of that those persons talking with him were engaged in a gambling business, but without direct evidence that he acquiesced, furthered and participated in their plan, it is still insufficient. U.S. v. Calaway, 524 F2d 609, 612 9th Cir. 1975. U.S. v. Frank, 520 F2d 1287, 2d Cir. 1975. Cianchetti v. U.S., 315 F2d 584, 2d Cir. He must have in some sense promoted the venture himself, and have had some stake in its outcome. U.S. v. Falcone, 109 F2d 579, 581, 2d Cir. It must be shown that he entered the plan encompassing the activities and involving the actions of at least five persons in the Hi-Way Lounge, and that he participated in them and did further the purpose that may have been formulated. Cianchetti, supra. U.S. v. Smaldone, 485 F2d 1933. U.S. v. Marrifield, 515 F2d 877, at page 882:

> "We can agree, therefore, as the government conceded during oral argument, that once the five man/30 day requirement has been met, all persons thereafter employed in the business are not automatically subject to conviction without regard to size, continuity, or the time span, simply because the size and continuity requirements were met originally. An illegal gambling business, like another is subject to vicissitudes, and may shrink in size and number of persons involved." Citing U.S. v. Bridges, 493 F2d 918.

I submit that the court's own expression of doubt as to the sufficiency concerning the proof against Carrara (T-5631, 5680) is definitive of the inadequacy of the evidence to support the guilty verdict. Mr. Carrara was entitled to protection against the improper or irrational verdict of the jury (Cephus v. U.S., 324 F2d 893) so that his conviction should be reversed.

POINT IX

APPELLANT WAS PREJUDICED BY THE DENIAL OF A SEVERANCE FOLLOWING THE DISMISSAL OF THE CONSPIRACY COUNT.

The following adjudications are offered in support of this point:

U.S. v. Central Supply Ass'n, 6 F.R.D. 526: (102 defendants and 102 co-conspirators, judgment of acquittal).

U.S. v. Moreton, 25 F.R.D. 262, 1960: (17 defendants, 11 counts, severance ordered).

U.S. v. Agnello, 267 F. Supp. 444, 1973, East. Dist. NY: (23 defendants, 14 counts, encompassing a period of over eight years, severance ordered in part - eight defendants).

U.S. v. Addonizio, 313 F. Supp. 486, 1970: (Although severance was denied to three defendants pre-trial, the possibility of severance was recognized upon a showing of prejudice during the trial.

U.S. v. Kelly, 349 F2d 720 (2d Cir. 1965): (20 defendants, 28 co-conspirators. Severance in part granted to 6 defendants pre-trial and to one defendant following appeal. Prejudice was assigned to the slow but inexorable accumulation of evidence which rubbed off on the one defendant severed on appeal. In this case there was a sparcity of evidence related to Carrara, and when so revealed it was minimal in reference to time, quantity and association with co-defendants.

U.S. v. Stern, 409 F2d 819 (2d Cir. 1969): Dismissal of conspiracy count warranted separate trials on substantive counts upon a showing of prejudice. Reference was made to the

absence of any proof being admitted subject to connection whereas in this case the evidence was so received throughout the trial. There were too many separate locations with separate groups of defendants to permit the jury to marshall all the proof applicable to each separate defendant.

U.S. v. Catino, 403 F2d 491 (2d Cir. 1968): The court refused to follow the minority holding in U.S. v. Shaffer, 363 US 511, 518-24, which determined for severance, and did so by citing the presence of only two parties and two transactions and a minimal possibility for confusion.

U.S. v. Aiken, 373 F2d 294 (2d Cir. 1967): Severance was denied only because of the want of a showing of prejudice. There were only four defendants actually tried with easily separated issues relating to each defendant.

U.S. v. Branker, 395 F2d 881 (2d Cir. 1967): Eight defendants in one conspiracy and 80 substantive counts. Severance was ordered on appeal against four defendants with little connection with co-defendants and the huge volume of testimony. What appears at page 888 is relevant and pursuasive here:

> "Apart from the prejudice inherent in any mass trial, a defendant in a trial in which the conspiracy count has been dismissed is likely to be prejudiced in defending the charges in the substantive counts by evidence, particularly hearsay testimony, which was admissable on the conspiracy count but which could not have been used against him in a separate trial on the substantive counts .....At page 889: In our view the risk of prejudice to the taxpayer defendants by reason of the joinder was so great that 'no amount of cautionary instructions could have undone the harm.' U.S. v. Kelly, 349 F2d 720, 758, 2d Cir. 1965; cert. denied 384 US 947. U.S. v. Patrisso, 262 F2d 194, 2d Cir. 1958."

U.S. v. Varelli, 407 F2d (7th Cir. 1969): Two conspiracies proved but one charged, and reversed and remanded for separate trials. Citing Kotteakos v. U.S. 328 US 750.

U.S. v. Bertolotti, 529 F2d 149 (2d Cir. 1975): Twenty-nine defendants were charged and seventeen ultimately went to trial. The fact pattern although concerned with narcotics, closely parallels the facts in this case. The indictment charged one overall conspiracy against all of the defendants and a number of substantive counts variously against some of the defendants. As was said in Bertolotti at page 155: "Since the indictment charges one overall conspiracy and the proof shows a series of smaller ones, there has been a material variance." The court then proceeded to examine the record to ascertain which of the defendants were prejudiced (cites Berger v. U.S., 295 US at 82). The courts analysis and reasoning from page 156 through page 159, I believe mirrors an equal conclusion that Carrara was prejudiced in his right to a fair trial, as well as the other defendants.

U.S. v. Toliver, 541 F2d 958, 2d Cir. 1976.

There were eight conspiracies involving nine persons with six tried. In denying severance for a want of a showing of prejudice, it said at page 962:

> "Here, as in Miley, no hearsay statements by a member ofone conspiracy incriminating a member of another one were admitted into evidence on the theory that both were members of the same conspiracy."
>
> Page 963: "On this record the number of conspiracies and conspirators, therefore, was not sufficient to indicate a spill-over effect."

Page 963: "It cannot be compared, for instance, to allowing the jury to spend two entire days 'Listening to obviously shocking and inflammatory discussions about assault, kidnapping, guns and narcotics, which U.S. v. Bertolotti, supra, 529 F2d at 158, found to have prejudiced the many defendants in that case who were not involved in those discussions.'"

Appellant Carrara had to sit by for five weeks and see volumes of seized materials; numerous observations of unconnected individuals and activities; reports of arrests of co-defendants; allusions to fingerprints, adding machines and a host of other matter contended by the prosecution to establish one overall conspiracy. And then when attention finally came to him it centered upon a measure of proof which gave the trial judge reason to question it as to sufficiency (T-5631, 5680) and the prosecution uncertainty as to his role (T-147, 6120-6132, 6061-6163, 6697, 6698). Having the foregoing adjudications in mind mandated it appears clearly that a severance was following the dismissal of the conspiracy count.

POINT X

SAVERIO CARRARA ADOPTS ALL OF THE POINTS AND ARGUMENTS OF CO-APPELLANTS PURSUANT TO RULE 28(1) OF THE FEDERAL RULES OF APPELLATE PROCEDURE.

CONCLUSION

THAT THE JUDGMENT OF CONVICTION BE REVERSED, AND THE THIRD SUBSTANTIVE COUNT BE DISMISSED. FAILING SUCH DISMISSAL THAT THE FRUITS OF ALL ELECTRONIC SURVEILLANCE BE SUPPRESSED, AND FAILING SUPPRESSION THAT A SEPARATED TRIAL BE DECREED.

Respectfully submitted,

SALVATORE PIAZZA, ESQ.
Attorney for Saverio Carrara
824 Manhattan Avenue
Brooklyn, New York 11222
(212) 389-0240

4/18/73

2:37 PM Sal Vigorio and a white female about 40-50 years of age depart HWL.
2:51 PM Saverio Carrara and a white male heavy build wearing a pink shirt (enter) HWL.
2:52 PM Short white male, age 55-60, wearing a hat exits the HWL.
2:56 PM White male, long side burns, wearing a blue sweater who talked to the driver of the BUICK above (2:31 PM) exits the HWL and stands in doorway.
2:54 PM White male, late 40's wearing a black coat enters the HWL.
3:00 PM Saverio Carrara and a white male exit the HWL.
3:05 PM Two white males, one about 30 years of age wearing a pink shirt; the other about 50 years of age, thinning hair enter the HWL.
3:17 PM White male wearing a green short sleeve shirt and a hat enters the HWL
3:18 PM White male with white hair and wearing a long black coat into HWL.
3:18 PM White male wearing green shirt

7/28/73

VISUAL LOG · AGENT · QEENER

3:54p John Massia out of Lounge.

3:58p Unknown male, tan coat, and hat out of Lounge.

3:59p Unknown male out of N.Y. AQ9315 and into Lounge. He wore a black jacket, gray pants, long side burns, and was approximately 30 year old.

3:59p Unknown young Hispanic into Lounge.

4:01p James Napoli, Jr. entered Lounge via side door carrying a bag.

4:01p Manse and Mikey DeLuca out of Lounge. Severio Carrara out of Lounge. DeLuca and Carrara enter vehicle with N.Y. license 204 QIX. Manse back into Lounge.

4:03p Unknown male, black jacket, out of Lounge. Robert Vigorito out of Lounge.

4:04p Two Unknown Hispanic males into Lounge. One wore a gray suit and was approximately 45. The other about 25.

4:05p Robert Vigorito and Ralph Ficarella into Lounge.

4:05p Unknown Hispanic male into Lounge wearing a green velvet jacket. He is known as Unknown "B".

4:06p Unknown in 2:52p entry out of Lounge.

4:06p Bascetta in and out of Lounge.

4:07p Unknown "B" out and in Lounge and out.

4:10p Individual in 2:25p entry out of Lounge into black over maroon Buick, NJ license YGV481.

4:11p Bobby Manse in side door of Lounge.

Page 4 CRS

P. 4

MONITORING LOG - AGENT PARSONS

APRIL 28

Time	Initial	IC OG	Activity Recorded
2:12pm	CJP		Conversation inaudible due to television set. Tape off.
2:38pm	CJP		Tape on. "come on back". Inaudible. Tape off.
2:49pm	CJP		Tape on. "gotta work for." Tape off. (inaudible).
3:03pm	CJP		Tape on. long inaudible portion.
3:13pm	CJP		"The guy was here yesterday" - J Napoli SR. and Peter Guido engage in a conversation re overlooks, overcharges, etc.
3:35pm	CJP		Napoli-SR.: "You get paid yet?" Jukebox and Television interference.
3:42pm	CJP		"Richie"
3:45pm	CJP		Peter Guido: "Next time you see me, you'll see me alone."
3:53pm	CJP		Tape off due to lack of audible transmission.
3:55pm	CJP		Tape on. Baseball game on television interrupts conversation. "Handle the pay..." Tape off.
4:00pm	CJP		"Where's Raymond now?" ....
4:20p.m.	CJP		J. Napoli, Sr. - "Talk to him" and "mentioned Lee's name. Long conversation with possibly Allis Neck where many dollars amounts are used.
4:36pm	CJP		"Ten thousand".
4:45pm	CJP		J Napoli, SR. "Don't have to pay, Sam."
4:52pm	CJP		"Hello, mike - how are you?" Long inaudible portion of conversation and long pauses follow.
5:[illegible]pm	CJP		Mtsm terminated.

Log ..... Page 1

Day ..... Date 4/28/73

EDNY 163
mike #1
Reel #1

Employee's Name

SA Charles J. Parsons

Date Stamp

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

75 CR 341

-v-

FRANK ALTESE, ET AL

DEFENDANTS

----------X

GOVERNMENT'S AFFIDAVITS AND ANALYSIS

The United States of America, by Fred F. Barlow, Special Attorney, Department of Justice, hereby submits copies of his and Special Agent Charlie J. Parsons' affidavits, and the Government's Analysis of Electronic Surveillance Transcripts, previously entered in United States v. Saccone, 76 CR 62.

Dated: Brooklyn, New York
June 16, 1976

Fred F. Barlow
Special Attorney
U.S. Department of Justice

However, in addition to these notations, I knew from my own knowledge as either monitoring, surveillance or supervising agent in the vicinity of the HiWay and in constant radio contact with all other surveilling and monitoring agents, that numerous other calls from surveilling agents were made which were not reflected in the FISUR logs. Many of these calls were made by agents driving by the HiWay who saw named subjects in the HiWay (and could not record their entry and drive at the same time). Richard Bascetta was one of the subjects who was seen inside the HiWay Lounge many times, apparently being inside before visual surveillance had begun.

Also, I personally knew from my presence and radio contact during the course of interceptions during HiWay I-III that such notification always preceded monitoring of the HiWay Lounge conversations.

Finally, attached as an exhibit to this affidavit is a 1973 calendar showing the relevant issuing dates of the HiWay I (blue), II (red) and III (green) orders, and the relevant interception time periods under these orders, as well as the date of inventory service.

Date	Photos or FISUR Log	Beginning Intercept: MISUR Log
April 13	2:19 Napoli, Sr. in 2:20 Bascetta out	1:04 p.m. 2:12 p.m.
April 14	4:27 Napoli, Jr. in	12:50 p.m.
April 16	3:44 Napoli, Sr. in	1:30 p.m.
April 17	1:36 Napoli, Sr. in	1:17 p.m.
April 18	3:37 Napoli, Jr. in	2:15 p.m.
April 19	1:20 Bascetta, DiMatteo	1:20 p.m.
April 20	2:14 Napoli, Jr. in	3:42 p.m.
April 21	2:43 Bascetta in	3:25 p.m.
April 23	1:58 Napoli, Sr. in	2:01 p.m.
April 24	1:59 Bascetta out 3:18 Napoli, Jr. in	
April 25	2:33 Bascetta out 3:05 Napoli, Sr. in	2:16 p.m. 3:22 p.m.

April 26	2:33 Bascetta in	3:35 p.m.
April 27	1:48 Napoli, Sr. out	2:03 p.m.
	2:01 Napoli, Sr. in	2:05 p.m.
April 28	2:26 Bascetta in	2:25 p.m.
April 30	3:27 Napoli, Sr. in	4:15 p.m.
May 3	2:34 Napoli, Sr. in	2:33 p.m.
May 4	2:18 Napoli, Sr. in	2:18 p.m.
May 5	2:00 Bascetta in	2:52 p.m.
		2:55 p.m.
May 7	2:33 Napoli, Sr. in	3:24 p.m.
		3:35 p.m.
		2:59 p.m.
May 9	3:13 Napoli, Jr. and Bascetta in	2:25 p.m.
May 10	2:04 Napoli, Sr. in	2:13 p.m.
May 11	2:26 Bascetta in	2:11 p.m.
May 12	2:35 Bascetta in	3:20 p.m.
May 14	2:38 Bascetta in	2:34 p.m.
May 15	2:47 Napoli, Sr. in	2:40 p.m.
May 16	2:43 Napoli, Sr. in	2:52 p.m.
May 17	2:33 Napoli, Jr. in	2:56 p.m.
	2:54 Napoli, Jr. in	
May 18	3:00 Bascetta in	3:19 p.m.
May 19		None
May 21		

C 321—Affidavit of Service by Mail.
Affirmation of Service by Mail on Reverse Side.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Appeal
XXXXX No. 76-1495

UNITED STATES OF AMERICA,

Appellee,
XXXXXXX

against

FRANK ALTESE, et al.,

Appellant.
XXXXXXX

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF **KINGS** *ss.:*

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at **47 McGuinness Blvd., Brooklyn, New York 112**

That on the **8th** *day of* **February,** *19* **77** *deponent served the annexed*

BRIEF FOR APPELLANT SAVERIO CARRARA

on attorney(s) **XXX as set forth in the attached list** *in this action at* **the addresses designated in the list** *the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.*

Sworn to before me

this **8th** *day of* **February,** *19* **77**

The name signed must be printed beneath
ADELE ARROYO

Notary Public
SALVATORE PIAZZA
Notary Public, State of New York
No. 41-8363300 Qual. in Queens County
Cert. filed with Kings County Clerk's
Commission Expires March 30, 1978

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